

USPS National Reassessment Process

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USPS National Reassessment Process **Overview**

A USPS Program

**Aggressively Monitors Light Duty, Limited Duty
and Rehabilitation Assignments**

Outplace Thousands of Employees

Huge Savings For Company

TWO NRP Programs (New Slide)

NRP (MMI)

- P2 Impacts Rehab Employees (MMI)**

**P1 & P2 Protocol Guide on APWU HR
FIC Reassessment -**

**NRP (Limited Duty) Protocol Guide pgs
14-56**

- No New Phase 1**
- P2 Impacts Those Rehab Employees Not
Yet Reassessed and LD Employees**

USPS NATIONAL REASSESSMENT PROCESS

Possible USPS Action

■ Assignments

–Renew Existing Job Offer

–Make New Job Offer

–No Work Available Refer to OWCP

– Possible Placement in Voc Rehab Program

– Significant OWCP Chargeback Savings to USPS

***LD – Daily Determinations – Adjustments to Job Offer (2499)**

Report Back next day, end of pp or new medical

OWCP for WLC, No Voc Rehab

Based On Existing Language

- **ELM 540, Injury Compensation**
- **EL 505, Injury Compensation**
- **Federal Employees' Compensation Act (FECA)**
- **20 CFR Parts 10 and 25**
 - **Claims For Compensation Under FECA**
- **5 CFR 353**
 - **Restoration To Duty From...Compensable Injuries**



Rehabilitation / Limited Duty Assignment Then Like Now – Outplacement Possible

- Traditional & Reassessment Process (Partially Recovered)
 - RTW to a medically suitable assignment
 - No medically suitable assignment
 - File for OWCP compensation / OWCP Disability Rolls
 - OWCP determines compensation eligibility – high probability OWCP Outplacement rehab program
- Difference
 - Traditional: **no determination of “necessary” work** or...
 - Reassessment Process: Formally informed “no **necessary work** available”

Rehabilitation / Limited Duty Assignment

2002 National Arbitration Case Das, E90-C-4E C 950762380

Make Work or Necessary Work?

–USPS Argued:

Rehab jobs are not intended to meet “operational” needs.
“Created because of legal, contractual and regulatory obligation to reassign an employee who is injured on the job...when the injured employee vacates the assignment, it will no longer exist”. Arbitrator Das ruled in favor of the USPS. Such jobs would not be posted for bid.

A Matter Of Convenience?

■ Reassessment Process RTW

–USPS Changes Position:

Necessary work only

In Compliance?

USPS Insists

- NRP Is Compliant With Handbooks, Manuals, Federal Law and Regulations

APWU Concerned About Application

- Necessary vs Medically Suitable Work
- Not Making **'Every'** Effort To Find **'Medically Suitable'** Work [ELM 546.142] (Case-By-Case Local Level)
- 'Craft' Seniority Step 4 Dispute (Case # Q00C - 4Q - CO7006778)
- Commuting Area rather than agency wide – ELM 546.142 (a) 4. (Step 4 Dispute Initiated - APWU # HQTG20071)
- Separation Disability Prior To 1 Year LWOP (Step 4 Dispute Initiated - APWU # HQTG20076)
- **Note Step 4 Disputes pgs 60-69**

NRP LD -In Compliance?

USPS Insists

- Simply a mere application of established NRP Processes

APWU rejects USPS claim - some distinct differences

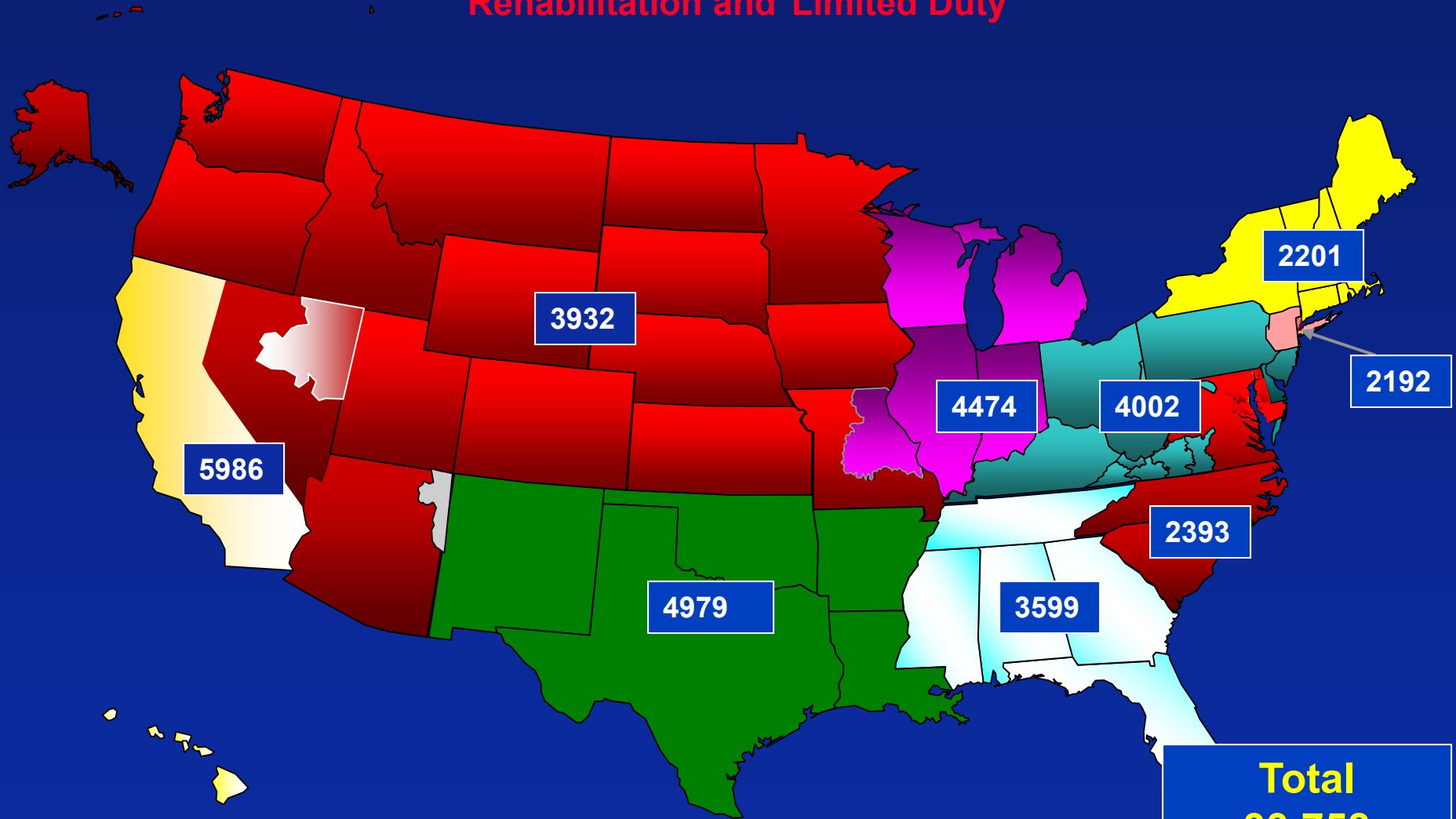
- Previous Infractions Continue (Reinitiate Same Step 4s)
- Can't meet “Must Make Every” obligation 546.142
 - Must Remain Available [FECA PM 2, 814 b (4) and c (2)]
- Less than 4 hour offers [FECA PM 2, 814 b (1)]
- Article 8 Violation
- Use of Form 2499 for Limited Duty Job Offers
- Modifications (Notations) to Job Offers
 - Suitable work list 545.32
 - Copy of JO to OWCP [20 CFR 10.507 (d)]
 - DFEC 5 USC 8106 Sanctions (pg 5 and 54 Letter) ECABs pgs 102-111

Updated NRP Pilot Results

<u>MMI Pilot Sites</u>	<u>Total Cases</u>	<u>Return to Full Duty</u>	<u>Retired</u>	<u>Change Assignment Increase Productivity</u>	<u>No Work Available</u>
NY Metro , San Diego, W. NY	1054	210 (20%)	83 (8%)	413 (39%)	180 (17%)
<u>LD Pilot Sites</u>	<u>Total Cases</u>	<u>Full Day</u>	<u>Partial Day</u>	<u>X</u>	<u>No Work Available</u>
LA, Sierra Coastal, Santa Ana, SE New England	2, 230	912 (41%)	667 (30%)	X X	651 (29%)

U.S. Postal Service By Area

Rehabilitation and Limited Duty



**Total
33,758
To Be
Reassessed**

APWU CALCULATIONS

NRP National Projection

Estimated Total Operating Expense Savings

Gross Savings

•80 with 12 month savings ► \$503.5 M

OWCP Cost Increase:

• 80 for 12 months: ► \$151.8 m

Net Savings to TOE:

•80 for 12 months ► \$351.7 m

Estimated Employee Impacts

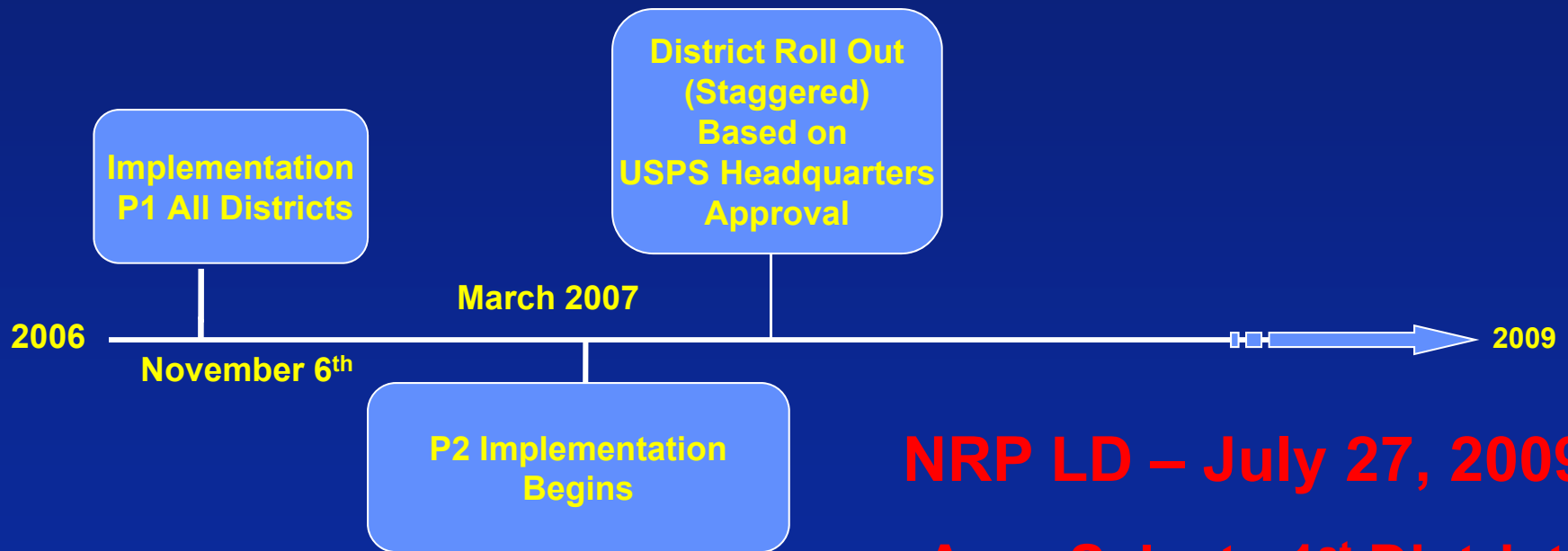
76 NWA and 24 Retirements per district

Projecting 6080 employees outplaced nationwide

Projecting 1920 employees opting for retirement

***USPS Not Realizing Anticipated Results Based On
OWCP Actions**

USPS National Reassessment Process Implementation Timeline



NRP LD – July 27, 2009

Area Selects 1st District

Every 7-10 Days

New District

USPS OPTION LETTER

Requests Employee Action

■ USPS Letter

–Return To Full Duty

(FD employee considered more productive)

–Retire

(Voluntary action- Forfeits WLC - No OWCP chargeback fee)

–Resign

(Voluntary action – Forfeits WLC- No OWCP chargeback fee)

Employee Should Make Informed Decision

➤ **4th Option – Request Light Duty - Limited Duty / Rehab Assignment – With or Without Reasonable Accommodation (Article 13 and ELM 546)**

➤ **5th Option - Respond Still Totally Disabled**

**USPS
NATIONAL REASSESSMENT PROCESS**

Phase 1 Overview

13 Steps

USPS Information Gathering

No “Make Work / Necessary Work” Determinations

USPS NATIONAL REASSESSMENT PROCESS

Phase 1 Overview

Identify **All** Limited Duty & Rehab Employees

This includes employees capable of working Limited Duty or a Rehab assignment, however the district has not provided work.

Identify **All** Light Duty Employees

All = All Bargaining Unit, Management, EAS, Supplemental

USPS NATIONAL REASSESSMENT PROCESS

Phase 1 Overview

- **Medical Documentation Review Of Each Light Or Limited Duty And Rehab Employee**
 - On A Case-By Case Basis – No Blanket Policy
 - **Determine If Updated Medical Documentation Is Required**
 - IOD Temporary – Date On Documentation *If* Consistent With Medical Condition Otherwise Every 30 Days (ELM 545.52)
 - IOD Permanent – Yearly Or If Suspected Change (EL 505)
 - Light Duty – According To USPS Light Duty Protocols Applied Consistent With Article 13
- *Note An Employee With One Or More Residual Disabilities From An Accepted IOD Claim In Combination With Non-work Related Restrictions Will Be Wholly Treated As A Limited Duty Or Rehab Employee (ELM 546.622)**

USPS NATIONAL REASSESSMENT PROCESS

Phase 1 Overview

- **Identify employees requiring updates**
- **Notify employees requiring updates**
- **14 days to get medical update**
- **Extensions granted if warranted**
- **Follow-up on updated medical requests**
- **Determine appropriate action to be taken for those who fail to comply.**
- **Identify any employees who have reached MMI**

USPS NATIONAL REASSESSMENT PROCESS

Phase 1 Overview

- Contact supervisor to determine duties being performed
- Verify current job offer matches the tasks being performed
- *Form 50's need to be verified and must reflect the current assignment. **[CAUTION-Ensure USPS does not take this opportunity to change PS-50 forms of non-APWU bargaining unit employees. Work search will begin with craft denoted on most current PS-50 form]**
- Ensure the USPS light duty SOP is in effect

USPS NATIONAL REASSESSMENT PROCESS

Phase 1 Overview

- Identify veteran preference eligible employees in light duty assignments
- Identify any employees who may be protected by USERRA
- Identify any employees who are “Qualified Individuals With Disability” (Rehabilitation Act)
- Make NRP shadow file of IC file
- The district and area assessment teams will have completed the NRP Phase 1.
- Refer to NRP P1 Activity File Checklist pg 7 and 87

USPS NATIONAL REASSESSMENT PROCESS

Phase 1 Overview

- **HQ notification**
- **HQ verification**
- **If all 13 steps of P1 verified as accurately completed by HQ, district is slotted for P2**

USPS NATIONAL REASSESSMENT PROCESS

Phase 2 Overview

“Make Work / Necessary Work”

Determinations Made

USPS NATIONAL REASSESSMENT PROCESS

Phase 2 Overview (updated)

Interviews Set

Union & Employees Given 14 Days Notice
Union Given Prior Notice of NWA
OIG & Inspectors Notified of NWA

Phase 2 Interview Script
Must Be Adhered To

Deviating Minimizes “Interactivity” & Omits Employee’s
Opportunity To Make Corrections

***NRP LD – No Interviews – Work Status Meetings**
No Notice to Union or Employee Pg 3

USPS NATIONAL REASSESSMENT PROCESS

Phase 2 Overview

The “Interactive” Interview

- Union Present (May Actively Participate) – **Work Status Mtg Also**
- Brief Explanation of NRP
- Review Medical
- Review Other Relative Info e.g. craft, bid, applicable language

Employee Advised:

- Renewing Existing Job Offer
- Making New Job Offer
 - If employee refuses new job offer, the USPS will continue to permit the employee to remain in existing job offer while OWCP makes suitability determination. Employee should not be sent home.
- Probability No Work Available
 - 2nd Interview in Approx 1 week

USPS NATIONAL REASSESSMENT PROCESS

Phase 2 Overview

2nd Interview (If No Change - NWA)

- Relinquish Badge / Empty Locker
- Paid Admin Remainder of Week
- Referred to OWCP
- Provide Form CA2a (just 1x for NRP LD pg 7)
 - Block #16 “Time Loss From Work”
 - Block #21 “Work Stoppage Caused By USPS Withdrawal of Limited Duty / Rehabilitation Assignment
- Provide Form CA7 (LD - not req'd to hold til end of pp)
- 3971 – IOD Medically Suitable Work Withdrawn pg 7
- MMI Possible Placement in OWCP Voc Rehab
 - LD Warn of Letter to Docs

USPS NATIONAL REASSESSMENT PROCESS

OWCP Processes (WD doc begins pg 70)

Be Aware:

- Recurrence Claims Not Fast Tracked
- Claim Not Automatically Approved
- “Closed Claims” Must Be Reopened
- Delays in WLC
- No WLC For Employees Within Scheduled Award Period
- Potential Loss Of Federal Employee Benefits
- Leave Buy Back pg 7 and 100
- OWCP Vocational Rehabilitation**
 - Probability of Private Sector Employment
 - May Request Federal Employment / No Requirement
 - Reduction in WLC

USPS NATIONAL REASSESSMENT PROCESS

OWCP Processes

NEW Slide

Be Aware:

LWECs – Lost Wage Earning Capacity

Can be done 60 days after RTW

**Compare Rate of Pay (Inj / Dis) to Rate at 60 Day
Trigger – Eligible for Difference (WLC)**

**Worsening of Condition, Make Work and Voc-
Rehab?...Intermittent Work – ECAB decision pg**

112 - 116

OWCP's Vocational Rehabilitation Program

pg 76, 85-86

[OWCP Program Procedures-Vocational Rehabilitation (OWCP Part 3) and OWCP Publication CA-810 Chapter 8 – 5. www.dol-esa.gov link DFEC]

- If the Postal Service does not provide medically suitable work to an injured employee, OWCP will offer vocational rehabilitation services to such employees in an effort to find them work in another federal agency or in the private sector.
- OWCP rehabilitation counselor (RC) assigned for up to 90 days. Provide placement services such as counseling and guidance, vocational testing, training programs, and placement help.
- If the RC determines that there are at least two jobs within commuting distance which the employee can perform (skill level / within medical restrictions), the employee will be notified, and will be expected to acquire that job.

Voc Rehab Continued

- Whether an employee gets a job or not, OWCP compensation will be reduced by the earnings, or potential earnings, of that position. A voc-rehabbed employee remains eligible for the Federal Employees Health Benefit Program as long as they receive one dollar of wage loss compensation from OWCP.
- It is our opinion that employees should not be involuntarily separated from Postal Service employment while they are receiving vocational rehabilitation services or if placed, prior to being in an lwop status for one continuous year as a compensation.

Reassignment or Reemployment

VOID -CBA, Art. 13 MOU

In an effort to protect craft seniority and prevent the crossing of crafts the parties agreed that the reassignment or reemployment of an IOD employee with resulting medical restrictions must be accomplished through Article 13 applicable to the craft to which the employee is reassigned

Article 13

- Makes no distinction between work related and non-work related medical conditions**
- Installation head must show greatest consideration and reassign to the extent possible in the employee's office**
- Installation head must give written reasons stating inability to reassign or reemploy**
- Will not be an indication that medical condition is not work related**

USPS NATIONAL REASSESSMENT PROCESS

Exempt From OWCP Voc Rehab

- **Full Duty and Limited Duty**
- **Totally Disabled**
- **Perform Core Essential Duties Of Bid With Or Without Reasonable Accommodations**
 - **These employees may be requested to update medical regarding limitations**
 - **If a job offer is made it should indicate their bid and only denote how their restriction is being accommodated. Not a blank check to change or remove employee from bid.**

USPS NATIONAL REASSESSMENT PROCESS

Grievances And Other Options

- **File Grievance**
- **Unemployment Compensation**
(benefits vary by state)
- **Appeal to MSPB** (?? On LD NRP intermittent)
(all compensationers)
- **File EEO Complaint**
- **Disability Retirement [Caution] Separation Disability**

FILING A GRIEVANCE pgs 71-73

- **The specific fact circumstances in each case should be developed by conducting a grievance investigation.**
- **Union has burden of proof**
- **Make- whole remedies should include**
 - **Returning employee to pay status**
 - **Paying for lost work hours**
 - **Restoring annual and sick leave**
 - **Only request what an arbitrator can award (avoid requesting FECA benefits)**

Filing Grievances The Investigation

- Interview SDOs on 546 WS who indicated NWA pg77
 - **LD Priority for Assignment WS & Letters pg 14-18**
- Where did the work the employee was performing go?
- Will anyone else be performing this work?
- Is the work still medically suitable?
- What efforts were made to reasonably accommodate?
- Did USPS meet their obligation to minimize any adverse or disruptive impact on the employee?

Filing Grievances The Investigation

- **Did their search include all facilities? (even those outside of the commuting area) Agency-wide?**
- **Request move reports / clock rings**
- **Ask the employee to give a statement about the duties they were performing before the duties were withdrawn**
- **Keep in mind – there is no applicable language that requires such jobs to be productive or necessary**

Grievance References

ELM 546. 11 USPS has legal responsibilities to employees with job related disabilities....

ELM 546.142 a. MUST make EVERY effort towards assigning work within employee's medical restrictions...minimize any adverse or disruptive impact on the employee

Grievance References

ELM 546.142 a. (4) An employee may be assigned limited duty / rehab assignment outside of the work facility ...when there is not adequate work available...at the employee's facility (ELM does not limit search to commuting area. Search should be agency wide. **Request "546 Worksheet"**)

ELM 546.65 and EL 505, Chapter 11- 6 If management refuses to accommodate, employee must be provided a copy of HQ's final concurrence of refusal, be notified in writing and of their right to file MSPB appeal (see also **EL 546.3 and 546.4**)

Grievance References

EL 505 Chapter 11 “Procedures” USPS policy to make every effort to reemploy or reassign IOD employees with permanent partial disabilities...

EL 505 Chapter 11.7 “Identifying a Modified Job Assignment” Capable of performing his / her core essential duties with only minor modifications – is not considered to be in a modified assignment. **(Our opinion not subject to NRP beyond medical update).**

Grievance References

CBA, Art.3 “Management Rights” Application must be consistent with applicable law and regulations...

5 CFR 353.306 states agencies must make every effort to restore, according to the circumstances in each case, an employee or former employee who is partially recovered from a compensable injury and who is able to return to limited duty

CBA, Art. 21.4 Employees covered by FECA. Employer will comply with regulations of OWCP (**20 CFR parts 10 and 25**)

Grievance References

20 CFR 10.505 ...The employer should advise the employee of any accommodations the agency can make to accommodate the employee's limitations due to the injury

CBA, Art. 2 No unlawful discrimination against handicapped employees, as prohibited by the Rehabilitation Act

EL 307 The Rehabilitation Act requires the employer to look for new or innovative ways to alter, restructure, or change the ways doing a job in order to allow for a "qualified individual with disability" to perform the essential functions of a particular job

Grievance References

CBA, Art. 5 “Prohibition of Unilateral Action” Employer will not take any actions affecting wages, hours and terms and conditions of employment as defined in Section 8 (d) of the NLRA which violate the CBA or are its obligations under the law

CBA, Art. 34 A fair days work for a fair days pay. APWU has not received notification that the USPS intends nor have they suggested to create a specific productivity standard for injured on duty workers.

ELM 546.21 Must receive all appropriate rights that any other bargaining unit employee is entitled. Therefore, an IOD employee is protected from any arbitrary work measurement systems or work or time standards.

Grievance Summary

- Violates clear CBA and handbook language
- Inconsistent with applicable law and regulations
- Contravenes long standing criteria which has been applied consistently and uniformly by both USPS and OWCP – medically suitable vs necessary
- Inconsistent with long standing practice
- Arbitrary and capricious in that productive and necessary are not contractually established work measurement standards
- Violates Article 34 protection against arbitrarily created and selectively applied work measurement systems, or work or time standards
- NRP may induce or compel injured employees to forego filing claims based on what they observe to be retaliatory and punitive against employees with accepted OWCP claims

Unemployment Compensation pg 74

- Requirements vary by state
- Request form SF 8, “Notice to Former Employee About Unemployment Insurance”. Just a title, does not mean you are not a USPS employee – by withdrawing your medically suitable work they have “unemployed” you
- OWCP will not offset WLC for simultaneous unemployment compensation but UC will probably have to be repaid to the state

MSPB Appeal pg 88

- **USPS obligated to conduct work search EVERY time an employee makes request to be accommodated (restored)**
- **All compensationers not restored may file**
- **Do not need to be a preference eligible**
- **Do not need to make a choice between grievance procedure and MSPB appeal at any step of either process – file both**
- **File to determine if agency acted in an arbitrary or capricious manner in denying restoration**
 - **Normally an agency's failure to comply with their own rules and regulations indicates they acted in an arbitrary and capricious manner**

Visit www.mspb.gov

APWU also has two booklets on MSPB available through the APWU web store www.apwu.org

EEO Complaints pg 84

- **The Rehabilitation Act of 1973, prohibits discrimination against persons with disabilities who, with reasonable accommodation, can perform the essential functions of a job.**
 - **Expanded pgs 93-99**
 - **Major Life Activities pg 96, Episodic pg 96, “Regarded As” cant’ be transitory or minor pg 97**
 - **Mitigating Measures pg 97 (Qual Standards)**
- **The Equal Employment Opportunity Commission protects qualified applicants and employees with disabilities from discrimination on the basis of disability.**
- **Requires reasonable accommodations that do not impose undue hardship.**

EEO Complaints Continued

- **Any Postal Service employee who believes that he or she has been illegally discriminated against can contact an EEO counselor at (888) 336-8777.**
- **This counseling request must be made within 45 calendar days of the alleged discriminatory act.**
- **The counselor will attempt to help the parties agree on a resolution. The Postal Service may offer mediation as part of the EEO process. If the matter is not resolved the EEO counselor will advise the employee of the procedures for filing a formal complaint.**

Disability Retirement pgs 79-83

- Request individual pre-retirement counseling. This counseling is conducted by HRSS on behalf of the USPS telephonically.
 - Provides information on retirement health benefits and life insurance programs, and provide basic annuity **estimates**.
 - OPM makes the final decision regarding disability retirement. It will determine if the permanent medical condition has resulted in a deficiency in the employee's performance, conduct, or attendance, or is otherwise incompatible with useful or efficient service.
 - Application for disability retirement must be received by OPM within one year after the date of separation.
- * Note – If subsequently totally disabled may also be entitled to Social Security Disability benefits.

Contact APWU Retirees Department for more information about FERS and CSRS disability retirement

Separation-Disability ELM 365.34 pg 75

- **An administrative action - not a retirement program and should not be confused with disability retirement.**
- **If an IOD employee is unable to return to work at the end of one year of continuous LWOP, and is not likely to return to work within the next six months, the Postal Service may remove the employee from Postal Service rolls by issuing a separation by disability.**
- **Requires USPS Headquarters Concurrence prior to action**
- **Employees should not be separated for disability until given a written notice of the proposed action.**
- **Eligible employees have one year from separation to file for disability retirement or their rights will lapse.**
- **If a separated employee recovers either partially or totally, he or she can request that the Postal Service restore them to duty. If the Postal Service refuses, the employee may appeal to MSPB**

Stay Informed

Visit APWU website www.apwu.org

Departments / Divisions

APWU Human Relations Department

Federal Injury Compensation

Reassessment Process

APWU Document, “USPS Withdrawal of a Limited Duty /
Rehabilitation Assignment”

Check APWU Human Relations Webpage Often For Updates

APWU Local and State organizations are requested to keep National informed as we are paying special attention to when and how the USPS implements their program at each site.

We are also requesting to be informed about any information that is in addition to or differs from information provided by APWU

USPS NATIONAL REASSESSMENT PROCESS

QUESTIONS?



**APWU State & Local Organizations Are Encouraged To Contact The
APWU Human Relations Department If They Need Guidance To Assist
Their Impacted Membership
(202) 842-4271**